

party should on or before a certain day execute a deed to be prepared by the other, and no demand of execution was made before or on the day, but was made at subsequent times, when execution was refused, it was held that an attachment ought not to issue against the party, and *quaere* whether an action would lie against him for refusing to execute it, time being there of the essence of the contract, *per* Parke B. *Doe v. Howells*, 5 Exch. 299. The demand may be made by one of two plaintiffs, and an attachment may be applied for after a lapse of two years without explanation of the delay, *Baily v. Curling*, 20 L. J. Q. B. 235. But it will not be granted where the award does not ascertain the whole entire duty with which it is sought to charge the party, *Graham v. Darcey*, 6 C. B. 537.

In *R. v. Hemsworth*, 3 C. B. 745, an account will be found of the proceedings in attachment. The attachment after a demand of performance was for the non-payment of money and delivery of goods, upon which the party was arrested and held to bail to answer interrogatories that should be propounded to him. He admitted his non-performance of the award, but his excuse was, as to the payment of the money, his bankruptcy, and as to the delivery of the goods, that they were in the possession of a stranger who claimed a lien, but these excuses were, on reference to the master, found insufficient. He then contended that his contempt was not wilful, and that he ought to be discharged on the payment of a nominal fine. But the Court said that he had no valid excuse for not performing the award, and was in contempt, and he was committed until the last day of the term, when it was ordered that he should be brought up to receive judgment for his contempt, affidavits to be furnished to the Court in the meantime as to the value of the subjects of the award, which appeared to be about 300*l*. When he was brought up again, the C. J. observed that the non-performance of the award was not a single act of contempt to be purged by a definite period of imprisonment, but the prisoner may, at the expiration of the term for which the Court on that occasion sentences him, be brought up to answer for his continuing contempt, nor will he be relieved from an action on the award. It appeared that the prisoner could, if he pleased, perform the award, and his not doing so was a wilful and pertinacious contempt of the Court. And with a view of compelling *him to act justly to the prosecutor, he was sentenced 632 to imprisonment for two years, unless he should sooner comply with the terms of the award.

References in equity and from Orphans Courts.—References in equity are, as has already been said, not regulated by any of our legislative enactments, and the course of Chancery with regard to them is explained in *Phillips v. Shipley*, 1 Bl. 516; and see *Murdock's case*, 2 Bl. 479. As to references from the Orphans Court, see Code, Art. 7, secs. 7, 8, 9,³³ *Dement v. Stonestreet*, 1 Md. 123.

³³ Code 1911, Art. 93, secs. 257-259. See *Prudential Ins. Co. v. Cottingham*, 103 Md. 322. These sections refer only to claims against the estate of a decedent which are asserted against the administrator in his fiduciary character, and do not apply to such as are contracted by him in his indi-